

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

<b>IN RE:</b>	)	
	)	
<b>MORREL CLARK HICKS,</b>	)	<b>Case No. 00-10825</b>
	)	<b>Chapter 7</b>
	)	
<b>Debtor.</b>	)	
_____	)	
	)	
<b>J. MICHAEL MORRIS, Trustee,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Adversary No. 00-5126</b>
	)	
<b>ERVIN LEASING COMPANY,</b>	)	
	)	
	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**JUDGMENT ON DECISION**

This matter comes before the Court on the Chapter 7 trustee's motion for summary judgment on his complaint to avoid an allegedly unperfected security interest and on Ervin Leasing's a cross-motion for summary judgment. Because the determination of the summary judgment motions will dictate the result of Ervin's motion for assumption or rejection of the lease, the Court considers that matter as well. At issue is whether the debtor's lease of an Ameri-Cure Spraybooth Model SDD/AM 25149, SN # 34117 is a indeed true lease or instead creates a security interest. Ervin Leasing contends that the lease is in fact a true lease because the lease contract allows for early termination of the lease, the term of the lease is not greater than the Spraybooth's remaining economic life, and the option purchase price at the end of the lease is not nominal. The trustee argues that the lease is in fact a disguised security interest because the lease

contract meets the “bright line test” contained in Kan. Stat. Ann § 84-1-201(37) for security interests, namely that the lease is not terminable by the debtor and the debtor can purchase the Spraybooth at the end of the lease for “nominal” consideration. After careful review of the record, the Court concludes that the lease is in fact a disguised security agreement and that Ervin Leasing’s security interest is not properly perfected. The trustee’s motion for summary judgment is GRANTED and Ervin Leasing’s motions for summary judgment and to require the trustee to assume or reject the lease are DENIED.

IT IS SO ORDERED.

Dated this 22<sup>nd</sup> day of April, 2002.

---

ROBERT E. NUGENT, BANKRUPTCY JUDGE  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS

## CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Judgment on Decision** were deposited in the United States mail, postage prepaid on this 22<sup>nd</sup> day of April, 2002, to the following:

J. Michael Morris  
1600 Epic Center  
301 N. Main  
Wichita, KS 67202

Eric D. Bruce  
Bruce, Bruce & Holt, L.L.C.  
439 North McLean, Suite 100  
P.O. Box 75037  
Wichita, KS 67275

William J. Stapleton  
126 S. Main Street  
Ann Arbor, MI 48104

U.S. Trustee  
500 Epic Center  
301 N. Main  
Wichita, KS 67202

Morrel Clark Hicks  
424 Oil Hill Rd.  
El Dorado, KS 67042

William H. Zimmerman  
Case, Moses, Zimmerman & Wilson, P.A.  
400 Commerce Bank Center  
150 N. Main  
Wichita, KS 67202-1321

---

Janet Swonger,  
Judicial Assistant